(3) 93-1998

No. [redacted]

Supreme Court, U.S.
FILED
JUL 28 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

WILLIAM WADDELL STAPLETON, et al., *Petitioner,*
Individually and as Representative
for the Class of Claimants in pending Cause No.
15,445 in the Circuit Court of Rankin County,
Mississippi and all others similarly situated,

v.

SEAMUS IAIN COWLEY, et al., Individually, and as
Representative of other Underwriters subscribing to
policy number 5239328506,

and

TEXAS SNUBBING CONTROL, INC.,
a Texas Corporation,

and

GARY KNOSTMAN, Trustee of the Estate in
Bankruptcy of Tomlinson Interests, Inc.,
a Texas Corporation,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITIONER'S REPLY MEMORANDUM

Of Counsel:
T. JACKSON LYONS
JANE SANDERS LEWIS
Standard Life Building
206 W. Pearl Street
Jackson, Mississippi 39201
601/352-0330

WAYNE E. FERRELL, JR.
405 Tombigbee Street
P. O. Box 24448
Jackson, Mississippi
39225-4448
601/969-4700
Counsel of Record
for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

6 pp

Respondent Cowley, representing Lloyd's Underwriters, claims in his Opposition brief at 2 that Stapleton has misstated the lower court's ruling: "The District Court ruled that Petitioner had standing to litigate the coverage issues, but did not have 'standing' as a matter of substantive law to complain of Underwriters' actions."

The **fact** is that the trial court dismissed Stapleton's contest over coverage. Stapleton's request for a declaratory judgment that coverage existed was not adjudicated, but dismissed. Underwriters, sadly, are disingenuous in suggesting that the district court ever held that Stapleton had standing to litigate coverage. No such "ruling" exists in the record.

Thus, the district court's dismissal of the coverage action could only be predicated on Stapleton's lack of standing in an Article III sense. Underwriters seek to cloud the standing issue by insisting that the trial court was using "standing" in the sense that state law provided no cognizable claim. The trial court's opinion dismissing the coverage action was based on Mississippi and Texas procedural law. Of course, in federal court a state's "no direct actions" rule is irrelevant in trying coverage issues in a federal declaratory judgment action. The trial court's failure to apply the clear mandate of *Hanna v. Plumer* is one of the federal issues raised by this litigation.

That is not the end of it, however. Underwriters, Opposition at 3, claim that Stapleton "suggests that the courts below denied him Article III 'standing' to contest the coverage issues in the case and to contest whether the settlement between Underwriters and Texas Snubbing control was binding on Petitioner." While this case has

yet to see the sublime, Stapleton has never "suggested" that the trial court denied him standing to contest whether the settlement was binding upon him. Indeed, the crux of this case – and the main federal issue raised by these proceedings – is that the federal district court exceeded its powers in entering judgment against him on the basis of an agreement to which he was not party.

Underwriters say the courts below held "that a third party claimant such as Petitioner who has not yet obtained a judgment was not a third party beneficiary of the insurance contract in question, and, accordingly, could not complain when the parties to the contract settled their differences." Opposition at 5.

This argument, Opposition at 3-5, seems to be that Stapleton is simply suffering adverse consequences of the agreement. This appears to be Lloyd's invitation to the Court to avoid the well-settled rule that third parties may not be legally bound by an agreement between others. Of course, whether non-settling persons are bound by other parties' settlements or merely suffering adverse consequences therefrom was the disagreement which so badly divided this Court in *Martin v. Wilks*, 490 U.S. 755, 109 S.Ct. 2180, 104 L.Ed.2d 835 (1989).

In *Wilks*, the issue was whether the district court had legally bound third parties to consent decrees entered to resolve a Title VII suit brought by African-American firefighters in Birmingham. The Chief Justice, speaking for a bare majority, held that the district court's decision did purport to bind the third parties and observed:

> The dissent argues on the one hand that respondents have not been "bound" by the decree but

> rather, that they are only suffering practical adverse affects . . . (citation omitted). On the other hand, the dissent characterizes respondents' suit not as an assertion of their own independent rights, but as a collateral attack on the consent decree . . . [E]ither the fact that the disputed employment decisions are being made pursuant to a consent decree is a defense to . . . Title VII claims or it is not. If it is a defense . . . it is very difficult to see why respondents are not being "bound" by the decree.

Wilks, 490 U.S. at 765, 109 S.Ct. at 2186, fn. 6. Analogous reasoning would apply in this case: if "contract principles," i.e., the settlement agreement, would operate as a defense by Lloyd's Underwriters to any claims Stapleton might raise, then in what sense is Stapleton not "bound"?

However, the district court in this case did not merely note *en passant* the potential effect of the settlement agreement on Stapleton's rights under the insurance policy and other law. The court went further:

> Underwriters reason that since Stapleton's rights are derivative of Texas Snubbing's rights, and since Texas Snubbing has released its claim against the policy, then Stapleton would likewise be barred from recovery under the policy. (citations omitted) The court is therefore called upon to determine whether the settlement entered between Underwriters, Texas Snubbing and Jim Hutchings is effective to deprive Stapleton of any potential right to policy benefits.

Cowley, 812 F.Supp. at 1452. Feeling so called, the district court granted summary judgment and bound a non-settling third party. Mississippi and Texas both forbid such a result.

Moreover, that the *Wilks* respondents were not made parties to the litigation, whereas here Stapleton was joined, makes no difference:

> A voluntary settlement in the form of a consent decree between one group of employees and their employer cannot possibly "settle," . . . the conflicting claims of another group of employees who do not join in the agreement. This is true even if the second group of employees is a party to the litigation.

Wilks, 490 U.S. at 768, 109 S.Ct. at 2188.

In summary, the trial court held that Stapleton had no cognizable rights under the contract. Research has revealed no other court which has held injured third parties' rights under insurance policies cut off by a collusive agreement between the insurance company and the insured. Also, the trial court bound Stapleton to an agreement between other parties. The dubious or non-existent antecedents of the district court's and Court of Appeals' decisions have created a wide field in which the invidious may operate.

Thus, Lloyd's Underwriters are, once again, factually disingenuous in asserting that Stapleton has suggested that the lower courts have "misapplied" state law. Opposition at 5. State law has not been misapplied in this case because no state law has ever been applied: the district court applied rules of decision in direct contravention of substantive state law. The *Erie* doctrine forbids such a

result. And that is the shortest answer to Underwriters' contention that no federal issue exists.

Respectfully submitted,

WAYNE E. FERRELL, JR.
405 Tombigbee Street
P. O. Box 24448
Jackson, Mississippi
39225-4448
601/969-4700
Counsel of Record
for Petitioner

Of Counsel:
T. JACKSON LYONS
JANE SANDERS LEWIS
Standard Life Building
206 W. Pearl Street
Jackson, Mississippi 39201
601/352-0330

July 28, 1994